February 1, 2016

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
ENTERGY NUCLEAR OPERATIONS, INC.	)	Docket Nos. 50-247-LR/286-LR
	)	
(Indian Point Nuclear Generating Units 2 and 3)	)	

NRC STAFF'S 48th STATUS REPORT
IN RESPONSE TO THE ATOMIC SAFETY AND
LICENSING BOARD'S ORDER OF FEBRUARY 16, 2012

In accordance with the Atomic Safety and Licensing Board's ("Board") "Order (Granting NRC Staff's Unopposed Time Extension Motion and Directing Filing of Status Updates)" ("Order"), issued on February 16, 2012, the NRC Staff ("Staff") herewith provides its 48th monthly status report to the Board.

Safety Issues

1. Track 2 Safety Issues. Hearings on the three "Track 2" safety contentions related to the License Renewal Application ("LRA") for Indian Point Units 2 and 3 ("IP2" and "IP3") were held on November 16-19, 2015. In accordance with the schedule proposed by the parties and adopted by the Board, the parties' proposed transcript corrections were filed on January 8, 2016; proposed findings of fact and conclusions of law are due February 29, 2016, and reply findings of fact and conclusions of law are due March 30, 2016.[1]

2. Proprietary Designation of Documents. There has been no change in this item since the Staff filed its previous status report. On July 20, 2015, the Board denied the State of

[1] *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), "Order (Setting Post-Hearing Briefing Schedule)" (Dec. 7, 2015).

New York's ("New York") motion to withdraw the proprietary designation of five documents;[2] the Commission has denied New York's petition for interlocutory review of that Order.[3] On October 20, 2015, New York filed a second motion, seeking the disclosure of ten Westinghouse Calculation Notes; the Board denied that motion in an oral ruling on November 16, 2015.[4] On December 14, 2015, New York filed a third motion, seeking the disclosure of six revised Westinghouse Calculation Notes;[5] answers opposing that motion have been filed by the Staff, Entergy and Westinghouse.[6]

3. Other Safety Issues. There has been no change in this item since the Staff filed its previous status report. The Staff is reviewing issues associated with two recent Interim Staff Guidance ("ISG") documents (LR-ISG-2012-02 and LR-ISG-2013-01).[7] The Staff has not yet determined whether these matters will be addressed in an SER Supplement; the Staff will provide further information to the Board regarding these issues when available.

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[2] *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), "Order (Denying New York Motion to Withdraw Proprietary Designation)" (July 20, 2015).

[3] *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), CLI-15-24, 82 NRC ___ (Nov. 9, 2015) (slip op.).

[4] Tr. at 4772 (Nov. 16, 2015).

[5] "State of New York Motion for Public Disclosure of Six Revised Westinghouse Documents" (Dec. 14, 2015).

[6] *See* (1) "NRC Staff's Answer in Opposition to the State of New York's Third Motion to Compel Public Disclosure of Confidential Westinghouse Documents" (Dec. 22, 2015); (2) "Westinghouse Electric Company's Opposition to New York State's Motion for Disclosure of Proprietary Documents" (Dec. 23, 2015); and (3) "Entergy's Answer Opposing State of New York Motion for Public Disclosure of Six Revised Westinghouse Documents" (Dec. 23, 2015).

[7] See (1) Notice of Issuance, Interim Staff Guidance; LR-ISG-2012-02; "Aging Management of Internal Surfaces, Fire Water Systems, Atmospheric Storage Tanks, and Corrosion under Insulation," 78 Fed. Reg. 70,076 (Nov. 22, 2013); (2) Notice of Issuance, Interim Staff Guidance; LR-ISG-2013-01; "Aging Management of Loss of Coating or Lining Integrity for Internal Coatings/ Linings on In-Scope Piping, Piping Components, Heat Exchangers, and Tanks," 79 Fed. Reg. 68,308 (Nov. 14, 2014).

Environmental Issues

4. FSEIS Supplement. There has been no change in this item since the Staff filed its previous status report. On December 22, 2015, the Staff issued its draft second supplement (Volume 5)[8] to the Final Supplemental Environmental Impact Statement ("FSEIS") for license renewal of IP2 and IP3. Public comments on Draft FSEIS Supplement 2 are due on March 4, 2015;[9] the Staff expects to issue Final FSEIS Supplement 2 in September 2016.[10]

5. Contention NYS-35/36. There has been no change in this item since the Staff filed its previous status report. On July 14, 2011, the Board issued LBP-11-17, granting summary disposition on Contention NYS-35/36 (Implementation of Cost-Beneficial SAMAs) in favor of New York.[11] On February 18, 2015, the Commission granted the Staff and Entergy's petitions for review of the Board's rulings on Contention NYS-35/36, and instructed the Staff to respond to four questions.[12] As required, the Staff filed its response on March 30, 2015; replies were filed by Entergy and New York on May 11, 2015.

In May 2013, the Applicant submitted a letter to the Staff (NL-13-075), reporting the results of its completed engineering project cost estimates for severe accident mitigation

[8] "Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supplement 38 Regarding Indian Point Nuclear Generating Unit Nos. 2 and 3, Draft Report for Comment," NUREG-1437, Supplement 38, Vol. 5 (Dec. 2015) ("Draft FSEIS Supplement 2"). *See* Letter from Sherwin E. Turk to the Board (Dec. 22, 2015), at 1.

[9] *See* Entergy Nuclear Operations, Inc.; Indian Point Nuclear Generating Unit Nos. 2 and 3, "Draft supplemental environmental impact statement; request for comment," 80 Fed. Reg. 81,377 (Dec. 29, 2015).

[10] *See* Letter from Sherwin E. Turk to the Board (Dec. 22, 2015), at 2.

[11] *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), LBP-11-17, 74 NRC 11, *petition for review granted,* CLI-15-3, 81 NRC 217 (Feb. 18, 2015).

[12] *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), CLI-15-3, 81 NRC 217 (Feb. 18, 2015).

alternatives ("SAMAs") that previously had been identified as potentially cost-beneficial.[13] The Applicant noted that it was submitting the information "to support resolution of certain issues identified" in LBP-11-17. The Staff presented its evaluation of the revised information in Draft FSEIS Supplement 2, issued on December 22, 2015. In accordance with the Board's Order of July 9, 2013, "adjudicatory submissions based on NL-13-075 are due no later than 60 days after the Staff issues its draft FSEIS supplement . . . discussing its review of NL-13-075 . . . ."[14]

6. Contention NYS-12C (SAMAs). There has been no change in this item since the Staff filed its previous status report. On February 14, 2014, New York filed a petition for Commission review of the Board's decision in LBP-13-13,[15] concerning its resolution of Contention NYS-12C;[16] on April 28, 2014, New York filed a petition for review of the Board's Order denying its motion to reopen and reconsider that decision.[17] On February 18, 2015, the Commission granted New York's petition for review and directed the parties to respond to eight

[13] *See* Letter from Kathryn M. Sutton, Esq., *et al.,* to the Board (May 7, 2013), attaching Letter from Fred Dacimo (Entergy) to the NRC Document Control Desk, NL-13-075 (May 6, 2013) (ADAMS Accession No. ML13142A014).

[14] *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3),"Order (Granting Entergy's Motion [for] Clarification)" (July 9, 2013), at 3.

[15] *Entergy Nuclear Operations, Inc*. (Indian Point Nuclear Generating Units 2 and 3), LBP-13-13, 78 NRC 246 (Nov. 27, 2013).

[16] "State of New York Petition for Review of Atomic Safety and Licensing Board Decision LBP-13-13 With Respect to Consolidated Contention NYS-12C" (Feb. 14, 2014). On March 9, 2015, the Commission issued a Memorandum and Order resolving the Staff's, Entergy's and Hudson River Sloop Clearwater's petitions for review of other portions of LBP-13-13. *See Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), CLI-15-6, 81 NRC 340 (2015) (reversing the Board's resolution of Contention NYS-8 (Transformers), and reversing in part, and affirming in part, its resolution of Contention CW-EC3A (Environmental Justice).

[17] *See* (1) "State of New York Petition for Review of Atomic Safety and Licensing Board's April 1, 2014 Decision Denying the State's Motion to Reopen the Record and for Reconsideration of the Board's November 27, 2013 Partial Initial Decision Concerning Consolidated Contention NYS-12C" (Apr. 28, 2014); (2) "Order (Denying New York's Motion to Reopen the Record; Setting Deadline for New or Amended Contention)" (Apr. 1, 2014).

related questions.[18] In accordance with the Commission's Order, initial briefs were filed by the Staff, Entergy, New York, and the State of Connecticut on March 30, 2015; reply briefs were filed by the Staff, Entergy and New York on April 29, 2015.

7. CZMA Issues. To the best of the Staff's knowledge, information and belief, the current status of CZMA-related issues is as follows.

(a) Previous Reviews. On June 12, 2013, the Board denied the Applicant's and New York's motions seeking the entry of a declaratory order regarding Entergy's claim that New York had previously conducted a review of IP2/IP3 for consistency with the New York State Coastal Management Program ("CMP"), such that no further review is required under the Coastal Zone Management Act ("CZMA").[19] The Board left open the possibility that the motions might be re-filed after consultations between the Staff and New York pursuant to 15 C.F.R. § 930.51(e). The Staff engaged in a series of consultations with the New York State Department of State ("NYSDOS") and the Applicant in 2013 and 2014.

(b) Grandfathering. On December 11, 2014, the State of New York Supreme Court, Appellate Division, Third Judicial Department, reversed the Supreme Court's December 2013 decision, and held (in a 5-0 decision) that Indian Point Units 2 and 3 were "grandfathered" under New York's CMP and are therefore exempt from consistency review.[20] On June 4, 2015, the Court of Appeals granted New York's motion for leave to appeal; on December 4, 2015, the court temporarily suspended the briefing schedule pending its review of recent correspondence regarding the State's consistency determination of November 6, 2015 (*infra*).

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[18] *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), CLI-15-2, 81 NRC 213 (Feb. 18, 2015).

[19] *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), "Order (Granting New York's Motions, Denying Clearwater's Motion, and Denying CZMA Motions)" (June 12, 2013).

[20] *Entergy Nuclear Operation, Inc. v. New York State Department of State,* 518510, 999 N.Y.S.2d 207, 2014 N.Y. App. Div. LEXIS 8686; 2014 NY Slip Op 08702 (App. Div. 3d Dep't, Dec. 11, 2014), *rev'g* 42 Misc. 3d 896, 976 N.Y.S.2d 650 (Sup. Ct. 2013).

(c) 2012 Consistency Certification. On December 17, 2012, Entergy filed a certification with the NYSDOS, asserting that license renewal of IP2/IP3 is consistent with the New York CMP; on November 5, 2014, Entergy withdrew that consistency determination, subject to its resubmittal following issuance of the Staff's Final FSEIS Supplement.[21] On November 21, 2014, NYSDOS rejected Entergy's withdrawal of its consistency certification,[22] and on November 6, 2015, NYSDOS issued its consistency determination, finding that license renewal of Indian Point Units 2 and 3 is not consistent with the New York CMP.[23] The U.S. Department of Commerce has extended the time for Entergy to appeal from NYSDOS's determination until 60 days after issuance of the Court of Appeals' final order on New York's grandfathering appeal.[24] On January 14, 2016, Entergy filed an action against the New York Secretary of State in the U.S. District Court for the Northern District of New York (Case 1:16-cv-00051-LEK-DJS), asserting that NYSDOS's November 6, 2015 determination was based on nuclear safety concerns, intrudes on the NRC's exclusive regulatory authority over such matters, and is preempted by the Atomic Entergy Act.

8. Other Matters. The Staff is not currently aware of any other matter that has the potential to impact the schedule for hearings in this proceeding. In accordance with the Board's direction (Order, at 2), the Staff will notify the Board as soon as any other event with potential to alter the hearing schedule arises.

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[21] *See* Letter from John Sipos to the Board (Nov. 6, 2014), attaching letter from Fred Dacimo (Entergy) to NRC Document Control Desk and Linda M. Baldwin, Esq. (NYSDOS), NL 14 140 ("Withdrawal of December 17, 2012 Coastal Zone Management Act Consistency Certification") (Nov. 5, 2014) (ADAMS Accession No. ML14310A346).

[22] Letter from Linda M. Baldwin, Esq., General Counsel (NYSDOS), to Fred Dacimo (Entergy) (Nov. 21, 2014) (ADAMS Accession No.ML14328A474).

[23] Letter from Cesar A. Perales (Secretary of State, NYSDOS), to Fred Dacimo (Entergy) (Nov. 6, 2015).

[24] Letter from Lois Schiffer (General Counsel, NOAA) to Sanford I. Weisburst, Esq. and Linda Baldwin, Esq. (Nov. 25 2015).

Respectfully submitted,

/Signed (electronically) by/

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Dated at Rockville, Maryland
this 1st day of February 2016

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NUCLEAR REGULATORY COMMISSION

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In the Matter of	)	
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ENTERGY NUCLEAR OPERATIONS, INC.	)	Docket Nos. 50-247/286-LR
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CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R § 2.305 (as revised), I hereby certify that copies of the foregoing "NRC STAFF'S 48th STATUS REPORT IN RESPONSE TO THE ATOMIC SAFETY AND LICENSING BOARD'S ORDER OF FEBRUARY 16, 2012," dated February 1, 2016, have been served upon the Electronic Information Exchange (the NRC's E-Filing System), in the above-captioned proceeding, this 1st day of February 2016.

/Signed (electronically) by/

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